

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF DRIGGS,
Driggs, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0205
CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B).

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and City of Driggs (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement (“Final Order”).

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”) has been delegated the authority pursuant to Section 309(g) of the CWA,

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Background

3.1. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA § 101(a), 33 U.S.C. § 1251(a).

3.2. The CWA prohibits the “discharge of any pollutant by any person” except, among others, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2.1. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

3.2.2. The CWA defines a “pollutant” to include “industrial, municipal, and agricultural waste discharged into water.” CWA § 502(6), 33 U.S.C. § 1362(6).

3.2.3. The CWA defines “point source” to include, among others, “any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.2.4. Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all

interstate waters; the territorial seas; and all impoundments and tributaries to those waters. 40 C.F.R. § 122.2.

3.3. The Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe. CWA § 402(a), 33 U.S.C. § 1342(a).

Factual Background

3.4. Respondent is a “municipality” organized under the laws of the State of Idaho, with jurisdiction over the disposal of sewage, industrial wastes, or other wastes, and is a “person” within the meaning of the CWA. CWA § 502(4)-(5), 33 U.S.C. § 1362(4)-(5).

3.5. Respondent owns and operates the Teton Regional Wastewater Treatment Facility (“Facility”) located on West Bates Road in Driggs, Idaho.

3.6. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to NPDES Permit No. ID-002014-1 (“Permit”). The Permit became effective on January 1, 2011 and expired on December 31, 2015. Respondent submitted an NPDES permit application, which EPA received on July 10, 2015, and the Permit has been administratively extended pursuant to 40 C.F.R. § 122.6.

3.7. The Facility discharges pollutants from Outfall 001 into an unnamed tributary, which discharges into Woods Creek. Outfall 001 is a “point source.” 40 C.F.R. § 122.2.

3.8. Woods Creek flows into the Teton River, which flows into the Henrys Fork, which flows into the Snake River, which flows into the Columbia River, which flows into the Pacific Ocean. Woods Creek is a tributary to an interstate water body that is subject to interstate

commerce. As such, Woods Creek is a “navigable water,” and a “water of the United States.” CWA § 502(7), 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

3.9. Sections I.B.4 and I.B, Table 1 of the Permit establish effluent limits for the discharge from Outfall 001. These effluent limits include, but are not limited to, 5-day biochemical oxygen demand (“BOD₅”), *Escherichia coli* (“*E. coli*”), total ammonia, total residual chlorine, and total suspended solids (“TSS”).

3.10. Sections I.B.4 and III.B of the Permit require Respondent to summarize monitoring results for the Facility each month in a Discharge Monitoring Report (“DMR”).

3.11. Each failure to comply with the effluent limitations and monitoring requirements specified in the Permit, issued pursuant to Section 402 of the CWA, is a violation of the terms and conditions of the Permit, and is a violation of Section 301(a) of the CWA. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.12. Respondent’s DMRs from November 2012 through June 2017 indicate the Facility had 3,722 violations of the effluent limits set forth in the Permit.

3.13. Section I.B, Table 1 of the Permit prohibits the Facility from discharges in which the concentration of *E. coli* exceeds 406 colonies per 100 milliliters in any single sample or analysis. Respondent violated this permit condition three times between November 2012 through June 2017, as follows:

Month of Violation	Permit Limit	Value Reported	Number of Violations
January 2013	406 / 100 mL	2,420 / 100 mL	1
June 2013	406 / 100 mL	2,420 / 100 mL	1
August 2015	406 / 100 mL	435 / 100 mL	1

3.14. Section I.B, Table 1 of the Permit prohibits the Facility from discharges in which

the monthly geometric mean concentration of *E. coli* exceeds 126 colonies per 100 milliliters.

Respondent violated this permit condition four times between November 2012 through June 2017, for 120 violations, as follows:

Month of Violation		Permit Limit	Value Reported	Number of Violations
January	2013	126 / 100 mL	698 / 100 mL	31
February	2013	126 / 100 mL	185 / 100 mL	28
May	2013	126 / 100 mL	152 / 100 mL	31
June	2013	126 / 100 mL	2,420 / 100 mL	30

3.15. Section I.B, Table 1 of the prohibits the Facility from discharges in which the average monthly concentration of BOD₅ exceeds 45 milligrams per liter. Respondent violated this permit condition eight times between November 2012 through June 2017, for 244 violations, as follows:

Month of Violation		Permit Limit	Value Reported	Number of Violations
January	2013	45 mg/L	179.5 mg/L	31
February	2013	45 mg/L	113.2 mg/L	30
March	2013	45 mg/L	118.8 mg/L	31
April	2013	45 mg/L	101.7 mg/L	30

Month of Violation		Permit Limit	Value Reported	Number of Violations
May	2013	45 mg/L	102 mg/L	31
June	2013	45 mg/L	88.6 mg/L	30
August	2013	45 mg/L	67.9 mg/L	31
April	2017	45 mg/L	48.9 mg/L	30

3.16. Section I.B, Table 1 of the Permit prohibits the Facility from discharges in which the average monthly loading of BOD₅ exceeds 225 pounds per day. Respondent violated this permit condition seven times between November 2012 through June 2017, for 212 violations, as

follows:

Month of Violation		Permit Limit	Value Reported	Number of Violations
January	2013	225 lbs/day	507 lbs/day	31
February	2013	225 lbs/day	290.77 lbs/day	28
March	2013	225 lbs/day	343.8 lbs/day	31
April	2013	225 lbs/day	414.75 lbs/day	30
May	2013	225 lbs/day	353.03 lbs/day	31
June	2013	225 lbs/day	351.72 lbs/day	30
August	2013	225 lbs/day	226.51 lbs/day	31

3.17. Section 1.B.4 of the Permit prohibits the Facility from discharges in which the monthly average effluent concentration of BOD₅ exceeds 35% of the monthly average influent concentration of BOD₅. This corresponds to the minimum of 65% removal requirement shown in Section I.B, Table 1 of the Permit. Respondent violated this permit condition five times between November 2012 through June 2017, for 151 violations, as follows:

Month of Violation		Permit Limit	Value Reported	Number of Violations
January	2013	65% removal	36% removal	31
February	2013	65% removal	58% removal	28
March	2013	65% removal	54% removal	31
May	2013	65% removal	49% removal	31
June	2013	65% removal	63% removal	30

3.18. Section I.B, Table 1 of the Permit prohibits the Facility from discharges in which the average monthly concentration of TSS exceeds 45 milligrams per liter. Respondent violated this permit condition two times between November 2012 through June 2017, for 62 violations, as follows:

Month of Violation	Permit Limit	Value Reported	Number of Violations
December 2012	45 mg/L	49 mg/L	31
October 2013	45 mg/L	47 mg/L	31

3.19. Section 1.B.4 of the Permit prohibits the Facility from discharges in which the monthly average effluent concentration of TSS exceeds 35% of the monthly average influent concentration of TSS. This corresponds to the minimum of 65% removal requirement shown in Section I.B, Table 1 of the Permit. Respondent violated this permit condition three times between November 2012 through June 2017, for 91 violations, as follows:

Month of Violation	Permit Limit	Value Reported	Number of Violations
June 2013	65% removal	64% removal	30
July 2013	65% removal	60% removal	31
June 2017	65% removal	60% removal	30

3.20. Section I.B, Table 1 of the Permit prohibits the Facility from discharging more than 0.089 pounds per day of TRC. Respondent violated this permit condition in December 2012, when Respondent discharged 0.94 pounds per day of TRC, for 31 violations.

3.21. Sections I.B, Table 1 and I.D of the Permit prohibit the discharge of pollutants from the Facility in which the average monthly concentration of ammonia exceeds 23 milligrams of nitrogen per liter up until October 1, 2013, and prohibits the discharge of pollutants from the Facility in which the average monthly concentration of ammonia exceeds 0.084 milligrams of nitrogen per liter on and after October 1, 2013. Respondent violated this permit condition 51 times between November 2012 through June 2017, for 1,549 violations, as follows:

Month of Violation	Permit Limit	Value Reported	Number of Violations
November 2012	23 mg/L	26.22 mg/L	30
December 2012	23 mg/L	32.36 mg/L	31
January 2013	23 mg/L	36.15 mg/L	31
February 2013	23 mg/L	33.43 mg/L	28
March 2013	23 mg/L	30.89 mg/L	31
April 2013	23 mg/L	31.39 mg/L	30
May 2013	23 mg/L	30.18 mg/L	31
June 2013	23 mg/L	29.13 mg/L	30
August 2013	23 mg/L	36.36 mg/L	31
September 2013	23 mg/L	23.24 mg/L	30
October 2013	0.84 mg/L	21.490 mg/L	31
November 2013	0.84 mg/L	14.100 mg/L	30
December 2013	0.84 mg/L	6.420 mg/L	31
January 2014	0.84 mg/L	20.660 mg/L	31
February 2014	0.84 mg/L	23.270 mg/L	28
March 2014	0.84 mg/L	24.710 mg/L	31
April 2014	0.84 mg/L	30.18 mg/L	30
May 2014	0.84 mg/L	34.99 mg/L	31
June 2014	0.84 mg/L	23.57 mg/L	30
August 2014	0.84 mg/L	17.77 mg/L	31
September 2014	0.84 mg/L	24.74 mg/L	30
October 2014	0.84 mg/L	33.58 mg/L	31
November 2014	0.84 mg/L	12.53 mg/L	30
December 2014	0.84 mg/L	1.88 mg/L	31
January 2015	0.84 mg/L	3.32 mg/L	31
February 2015	0.84 mg/L	27.44 mg/L	28
March 2015	0.84 mg/L	29.08 mg/L	31
April 2015	0.84 mg/L	29.15 mg/L	30
May 2015	0.84 mg/L	30.90 mg/L	31
June 2015	0.84 mg/L	20.95 mg/L	30

Month of Violation		Permit Limit	Value Reported	Number of Violations
July	2015	0.84 mg/L	6.86 mg/L	31
August	2015	0.84 mg/L	1.06 mg/L	31
September	2015	0.84 mg/L	0.88 mg/L	30
October	2015	0.84 mg/L	6.11 mg/L	31
November	2015	0.84 mg/L	11.10 mg/L	30
December	2015	0.84 mg/L	10.95 mg/L	31
January	2016	0.84 mg/L	20.85 mg/L	31
February	2016	0.84 mg/L	23.90 mg/L	29
March	2016	0.84 mg/L	24.05 mg/L	31
April	2016	0.84 mg/L	19.55 mg/L	30
June	2016	0.84 mg/L	7.55 mg/L	30
July	2016	0.84 mg/L	22.85 mg/L	31
August	2016	0.84 mg/L	15.20 mg/L	31
September	2016	0.84 mg/L	8.35 mg/L	30
October	2016	0.84 mg/L	11.90 mg/L	31
November	2016	0.84 mg/L	11.87 mg/L	30
December	2016	0.84 mg/L	6.67 mg/L	31
January	2017	0.84 mg/L	1.82 mg/L	31
February	2017	0.84 mg/L	1.26 mg/L	28
March	2017	0.84 mg/L	3.30 mg/L	31
June	2017	0.84 mg/L	4.11 mg/L	30

3.22. Sections I.B, Table 1 and I.D of the Permit prohibit the discharge of pollutants from the Facility in which the average monthly daily loading of ammonia exceeds 115 pounds of nitrogen per day up until October 1, 2013, and prohibits the discharge of pollutants from the Facility in which the average monthly daily loading of ammonia exceeds 4.2 pounds of nitrogen per day on and after October 1, 2013. Respondent violated this permit condition 43 times between November 2012 through June 2017, for 1,307 violations, as follows:

Month of Violation		Permit Limit	Value Reported	Number of Violations
April	2013	115 lbs/day	128.01 lbs/day	30
June	2013	115 lbs/day	115.64 lbs/day	30
August	2013	115 lbs/day	121.29 lbs/day	31
October	2013	4.2 lbs/day	53.05 lbs/day	31
November	2013	4.2 lbs/day	29.63 lbs/day	30
December	2013	4.2 lbs/day	21.14 lbs/day	31
January	2014	4.2 lbs/day	68.06 lbs/day	31
February	2014	4.2 lbs/day	81.12 lbs/day	28
March	2014	4.2 lbs/day	102.21 lbs/day	31
April	2014	4.2 lbs/day	22.71 lbs/day	30
May	2014	4.2 lbs/day	155.83 lbs/day	31
June	2014	4.2 lbs/day	132.68 lbs/day	30
July	2014	4.2 lbs/day	88.32 lbs/day	31
August	2014	4.2 lbs/day	119.25 lbs/day	31
September	2014	4.2 lbs/day	112.86 lbs/day	30
October	2014	4.2 lbs/day	37.51 lbs/day	31
November	2014	4.2 lbs/day	4.89 lbs/day	30
December	2014	4.2 lbs/day	7.55 lbs/day	31
January	2015	4.2 lbs/day	75.52 lbs/day	31
February	2015	4.2 lbs/day	50.45 lbs/day	28
March	2015	4.2 lbs/day	54.94 lbs/day	31
April	2015	4.2 lbs/day	29.66 lbs/day	30
May	2015	4.2 lbs/day	44.43 lbs/day	31
June	2015	4.2 lbs/day	54.53 lbs/day	30
July	2015	4.2 lbs/day	4.30 lbs/day	31
October	2015	4.2 lbs/day	14.12 lbs/day	31
November	2015	4.2 lbs/day	28.13 lbs/day	30
December	2015	4.2 lbs/day	61.85 lbs/day	31
January	2016	4.2 lbs/day	55.63 lbs/day	31
February	2016	4.2 lbs/day	67.35 lbs/day	29
March	2016	4.2 lbs/day	64.54 lbs/day	31
April	2016	4.2 lbs/day	57.43 lbs/day	30
June	2016	4.2 lbs/day	51.52 lbs/day	30
July	2016	4.2 lbs/day	86.41 lbs/day	31
August	2016	4.2 lbs/day	40.27 lbs/day	31

Month of Violation	Permit Limit	Value Reported	Number of Violations
September 2016	4.2 lbs/day	22.07 lbs/day	30
October 2016	4.2 lbs/day	33.60 lbs/day	31
November 2016	4.2 lbs/day	15.99 lbs/day	30
December 2016	4.2 lbs/day	11.60 lbs/day	31
January 2017	4.2 lbs/day	7.60 lbs/day	31
February 2017	4.2 lbs/day	10.54 lbs/day	28
March 2017	4.2 lbs/day	27.49 lbs/day	31
June 2017	4.2 lbs/day	34.27 lbs/day	30

3.23. Sections I.B, Table 1 and I.D of the Permit prohibit the discharge of pollutants from the Facility in which the maximum daily concentration of ammonia exceeds 1.68 milligrams of nitrogen per liter on and after October 1, 2013. Respondent violated this permit condition 36 times between October 2013 through June 2017, for 36 violations, as follows:

Month of Violation	Permit Limit	Value Reported	Number of Violations
October 2013	1.68 mg/L	5.37 mg/L	1
November 2013	1.68 mg/L	3.52 mg/L	1
January 2014	1.68 mg/L	5.16 mg/L	1
February 2014	1.68 mg/L	5.81 mg/L	1
March 2014	1.68 mg/L	6.17 mg/L	1
April 2014	1.68 mg/L	7.54 mg/L	1
May 2014	1.68 mg/L	8.74 mg/L	1
June 2014	1.68 mg/L	5.89 mg/L	1
July 2014	1.68 mg/L	4.44 mg/L	1
August 2014	1.68 mg/L	6.18 mg/L	1
September 2014	1.68 mg/L	8.39 mg/L	1
October 2014	1.68 mg/L	3.13 mg/L	1
January 2015	1.68 mg/L	6.86 mg/L	1
February 2015	1.68 mg/L	7.27 mg/L	1
March 2015	1.68 mg/L	7.28 mg/L	1
April 2015	1.68 mg/L	7.72 mg/L	1
May 2015	1.68 mg/L	15.23 mg/L	1

Month of Violation	Permit Limit	Value Reported	Number of Violations
June 2015	1.68 mg/L	1.72 mg/L	1
November 2015	1.68 mg/L	2.77 mg/L	1
December 2015	1.68 mg/L	2.74 mg/L	1
January 2016	1.68 mg/L	5.21 mg/L	1
February 2016	1.68 mg/L	5.98 mg/L	1
March 2016	1.68 mg/L	6.01 mg/L	1
April 2016	1.68 mg/L	4.89 mg/L	1
May 2016	1.68 mg/L	2.74 mg/L	1
June 2016	1.68 mg/L	1.89 mg/L	1
July 2016	1.68 mg/L	5.71 mg/L	1
August 2016	1.68 mg/L	3.8 mg/L	1
September 2016	1.68 mg/L	2.09 mg/L	1
October 2016	1.68 mg/L	3 mg/L	1
November 2016	1.68 mg/L	4.62 mg/L	1
December 2016	1.68 mg/L	3.47 mg/L	1
January 2017	1.68 mg/L	1.93 mg/L	1
February 2017	1.68 mg/L	2.45 mg/L	1
March 2017	1.68 mg/L	4.31 mg/L	1
June 2017	1.68 mg/L	4.78 mg/L	1

3.24. Sections I.B, Table 1 and I.D of the Permit prohibit the discharge of pollutants from the Facility in which the maximum daily load of ammonia exceeds 8.4 pounds of nitrogen per day on and after October 1, 2013. Respondent violated this permit condition 32 times between October 2013 through June 2017, for 32 violations, as follows:

Month of Violation	Permit Limit	Value Reported	Number of Violations
October 2013	8.4 lbs/day	13.26 lbs/day	1
January 2014	8.4 lbs/day	17.01 lbs/day	1
February 2014	8.4 lbs/day	20.28 lbs/day	1
March 2014	8.4 lbs/day	25.55 lbs/day	1
April 2014	8.4 lbs/day	90.86 lbs/day	1
May 2014	8.4 lbs/day	38.96 lbs/day	1
June 2014	8.4 lbs/day	33.17 lbs/day	1

Month of Violation		Permit Limit	Value Reported	Number of Violations
July	2014	8.4 lbs/day	22.08 lbs/day	1
August	2014	8.4 lbs/day	29.81 lbs/day	1
September	2014	8.4 lbs/day	28.21 lbs/day	1
October	2014	8.4 lbs/day	9.37 lbs/day	1
January	2015	8.4 lbs/day	18.88 lbs/day	1
February	2015	8.4 lbs/day	12.61 lbs/day	1
March	2015	8.4 lbs/day	13.73 lbs/day	1
April	2015	8.4 lbs/day	118.64 lbs/day	1
May	2015	8.4 lbs/day	11.1 lbs/day	1
June	2015	8.4 lbs/day	13.63 lbs/day	1
December	2015	8.4 lbs/day	15.46 lbs/day	1
January	2016	8.4 lbs/day	13.91 lbs/day	1
February	2016	8.4 lbs/day	16.84 lbs/day	1
March	2016	8.4 lbs/day	16.13 lbs/day	1
April	2016	8.4 lbs/day	14.36 lbs/day	1
May	2016	8.4 lbs/day	15.46 lbs/day	1
June	2016	8.4 lbs/day	12.88 lbs/day	1
July	2016	8.4 lbs/day	21.6 lbs/day	1
August	2016	8.4 lbs/day	10.07 lbs/day	1
November	2016	8.4 lbs/day	38.53 lbs/day	1
December	2016	8.4 lbs/day	28.92 lbs/day	1
January	2017	8.4 lbs/day	16.10 lbs/day	1
February	2017	8.4 lbs/day	20.40 lbs/day	1
March	2017	8.4 lbs/day	35.92 lbs/day	1
June	2017	8.4 lbs/day	39.89 lbs/day	1

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.2. *Penalty:* Pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$13,500 (the "Assessed Penalty").

4.3. Respondent agrees to pay the Assessed Penalty within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.5. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
young.teresa@epa.gov

David Domingo, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
domingo.david@epa.gov

4.6. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, the entire unpaid balance of the Assessed Penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the Assessed Penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

4.7. If Respondent fails to pay any portion of the Assessed Penalty in full by its due date, Respondent shall also be responsible for payment of the following amounts:

4.7.1. *Interest.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the Assessed Penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.7.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the Assessed Penalty, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. *Federal Tax.* The Assessed Penalty, including any additional costs incurred under Paragraph 4.7, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.9. Except as described in Paragraph 4.7 and its subparagraphs, each party shall bear its own fees and costs in bringing or defending this action.

4.10. For purposes of this proceeding, Respondent expressly waives any right to contest the allegations contained in this Consent Agreement and waives any right to appeal the Final Order.

4.11. Respondent waives any and all claims for relief and otherwise available rights to judicial or administrative review or remedies which Respondent may have, with respect to any issue of fact or law set forth in this Final Order, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

4.12. The undersigned representative of Respondent certifies that he is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this document.

4.13. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in the Final Order.

4.14. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

The Honorable HYRUM JOHNSON, Mayor
City of Driggs

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF DRIGGS,
Driggs, Idaho

Respondent.

DOCKET NO. CWA-10-2018-0205

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to

consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

1.5. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

1.6. This Final Order shall become effective upon filing.

SO ORDERED this ____ day of _____, 2018.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10